

**EXHIBIT H**

STATE OF WISCONSIN : CIRCUIT COURT : MILWAUKEE COUNTY

CARL SORCIC, et al.,

Plaintiffs,

Case No. 657-163

vs.

KEENE CORPORATION, et al.,

Defendants.

COURT'S DECISION  
ON MOTION TO STRIKE  
DR. CASTLEMAN'S TESTIMONY

April 3, 1989

Before the  
HONORABLE PATRICIA D. McMAHON  
Circuit Judge, Branch 18  
Presiding

APPEARANCES:

PREVIANT, GOLDBERG, UELMEN, GRATZ, MILLER &  
BRUEGGEMAN, S.C., by Albert J. Goldberg, 788 North Jefferson  
Street, P. O. Box 92099, Milwaukee, WI 53202, for the  
Plaintiffs.

FOLEY & LARDNER, by Trevor J. Will, First Wisconsin  
Center, 777 East Wisconsin Avenue, Milwaukee, WI 53202-5367,  
for the Defendants, Keene Corporation and Owens-Illinois,  
Inc.

SCHIFF, HARDING & WAITE, by Robert Riley and Paul  
Scrudato, 7200 Sears Tower, Chicago, IL 60606, for Defendant,  
Owens-Illinois, Inc.

ARNDT & BENTON, P.A., by Duane E. Arndt and Mark M.  
Velguth, 900 First Bank Place West, Minneapolis, MN 55402,  
for Defendant, Eagle-Picher Industries, Inc.

BORGELT, POWELL, PETERSON & FRAUEN, S.C., by Steven  
W. Celba and Michael D. Stotler, 735 North Water Street,  
Milwaukee, WI 53202, for Defendant, Owens-Corning Fiberglas  
Corporation.

1                   FELLOWS, PIPER & SCHMIDT, by Richard E. Schmidt, 622  
2 North Water Street, Milwaukee, WI 53202, for Defendant, Rock  
Wool Manufacturing Company.

3                   BRENNAN & COLLINS, by James P. Brennan and Russell  
4 D. Bohach, 788 North Jefferson Street, Milwaukee, WI 53202,  
for Defendant, Celotex Corporation.

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6                   THE COURT: The first part of the argument is that  
7 Mr. Castleman is not a medical doctor and, therefore, cannot  
8 give his opinion as to what the articles state, he has no  
9 expertise to explain what the article says of significance.  
10 He certainly can read an article and say this is the title of  
11 the article. But plaintiff further argues that he should be  
12 able to testify that he can identify the articles by naming  
13 them.

14                  The problem I have with this is that no matter how  
15 he lists them, he makes a selection and--

16                  MR. GOLDBERG: What?

17                  THE COURT: Makes a selection of lists. There's no  
18 way he can give a hundred percent of all the articles. He has  
19 to select those articles of significance. What is his  
20 expertise to select which articles are significant, which are  
21 not, which are repetitive, which are not, if he merely lists  
22 the articles, basically relying on the authors who give a  
23 title to that article, and that could be misleading. The  
24 article could have nothing to do with what that title says or  
25 could say much more than the title would reveal. No matter

1 how he testifies, he has to make choices, and I found the opin-  
2 ion of Judge Grady to be very persuasive on both factors. I  
3 don't see--and I have not heard that Mr. Castleman possessed  
4 any other expertise to make him--give him the ability to do  
5 other than just give a list. And, if that were the case, we  
6 would have--we could just have lay witnesses come up here and  
7 read a list of everything they found in the Milwaukee County  
8 library or any other library that he felt inclined to list,  
9 and I don't see how that leads to--how that's probative in  
10 most cases. And, given the fact that this witness does not  
11 have the expertise, he will not testify as an expert witness,  
12 and I don't see how his testimony would be probative as a lay  
13 witness.

14 I specifically would reject the fact he has or  
15 hasn't testified in other cases. I think that's irrelevant  
16 to this proceeding. And the fact that he maybe testifies  
17 often for plaintiffs I think is irrelevant. I'm basing this  
18 decision on the information provided as to his testimony in  
19 this particular case so that the--

20 MR. GOLDBERG: Your decision is what, Your Honor?

21 THE COURT: That Mr. Castleman will not be able to  
22 testify as an expert witness in this case, and that I do not  
23 see on the record before me any relevance to any testimony he  
24 may have as a lay witness.

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1 STATE OF WISCONSIN )  
2 ) SS:  
3 MILWAUKEE COUNTY )

4 I, Linda J. Levengood, an official court reporter in  
5 and for the Circuit Court of Milwaukee County, do hereby  
6 certify that the foregoing is a true and correct transcript  
7 of the Court's decision on allowing Dr. Castleman to testify  
8 in the above-entitled case as the same is contained in my  
9 original machine shorthand notes on the said trial or  
10 proceeding.

11 Dated at Milwaukee, Wisconsin, this 4th day of  
12 April, 1989.

13   
14 Linda J. Levengood, APR  
15 Official Reporter  
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